

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

D.S.; D.Y. by and through his next friend
JULIE KELLOGG-MORTENSEN; H.A.
by and through his next friend KRISTEN
BISHOPP; and DISABILITY RIGHTS
WASHINGTON, a nonprofit membership
organization for the federally mandated
Protection and Advocacy Systems,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CHILDREN,
YOUTH, AND FAMILIES; and ROSS
HUNTER, in his official capacity as
Secretary of the Washington State
Department of Children, Youth, and
Families,

Defendants.

No. 2:21-cv-00113-BJR

ORDER GRANTING JOINT
MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT

THIS MATTER having come before the Court on the parties' Joint Motion for Final
Approval of Class Settlement Agreement and having been duly considered, the Court makes the
following findings:

ORDER - 1

1 The Court has jurisdiction over the claims against all Defendants pursuant to 28 U.S.C. §§
2 1331, 1343(a). Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
3 1391(b).

4 The Court, in its June 24, 2022 Order, preliminarily approved the parties' proposed
5 Settlement Agreement. Dkt. 97. The Court's Order further approved the parties' notice to class
6 members regarding the proposed settlement (*see* Declaration of Susan Kas ("Kas Decl.," Dkt. 93-
7 2), Ex. B), and the method for distributing the notice as described in the Notice Plan (*see* Kas
8 Decl., Ex. C). The Order also provided class members until August 12, 2022 to submit written
9 objections.
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11 The Court conducted a final approval hearing, via Zoom, on September 15, 2022. Counsel
12 for Plaintiffs and Defendants presented argument as to why the Settlement Agreement is fair,
13 reasonable, and adequate and should be approved. The Court also heard arguments from counsel
14 for James and Shaylee Medcraft, who filed objections to the Settlement Agreement on behalf of
15 their children. *See* Dkt. 111. The Medcrafts, while not objecting to the substance of the
16 Settlement Agreement, argued that they did not receive individual notice; that the proposed
17 settlement did not provide class members with an opt-out procedure; and that this case should
18 proceed to trial in order to benefit class members with factual findings that would collaterally estop
19 Defendants in subsequent individual litigations for damages. *See id.* Finally, the Court heard from
20 several social work practitioners, and parents of children who had been in Defendants' custody,
21 who expressed both satisfaction and concerns with the proposed Settlement Agreement. The Court
22 finds that class members and others affected by the proposed Settlement Agreement received
23 adequate opportunity to object.
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1 As stated on the record during the final approval hearing, the Court finds, as counsel for
2 the Medicrafts conceded, that the Medicrafts are not class members and therefore have no standing
3 to object to the proposed settlement. *See* Fed. R. Civ. P. 23(e)(5)(A) (“[a]ny *class member* may
4 object to the propos[ed] [settlement] if it requires court approval” (emphasis added)). The Court
5 also finds that the parties complied with the Notice Plan in all material respects, meeting the due
6 process requirements of the United States Constitution and Rule 23(e) of the Federal Rules of Civil
7 Procedure. *See* Dkts. 98-100. Given that the class in this case was certified under Rule 23(b)(2)
8 (*see* Dkt. 77), individual notice to class members was not required. *See* Fed. R. Civ. P. 23(c)(2)(A);
9 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 363 (2011) (recognizing that Rule 23(b)(2) “does
10 not require that class members be given notice”). For the same reason, the proposed settlement
11 was not required to provide class members with an opt-out procedure. *See Wal-Mart Stores*, 564
12 U.S. at 362 (recognizing that Rule 23 “provides no opportunity for ... (b)(2) class members to opt
13 out”).
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16 The Court finds that the proposed Settlement Agreement (Dkt. 94-1) is fair, reasonable,
17 adequate, and beneficial to class members in light of the relief Plaintiffs have obtained in
18 settlement to achieve the goals of the litigation. Further litigation would expose both sides to risk
19 and expense, given the complexity of this lawsuit and the likely duration of litigation. The
20 Settlement Agreement is the result of arms’ length negotiations, conducted with the assistance of
21 a skilled neutral mediator and after thorough factual and legal investigation and discovery, and is
22 not the product of fraud, collusion, or overreaching. While the proposed settlement will not result
23 in factual findings that could later be used in prosecuting individual lawsuits seeking damages,
24 Plaintiffs, in this case, never sought damages, but instead pursued only injunctive relief of the sort
25 contemplated by the Settlement Agreement. No class member or interested party has raised
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1 concerns that alter the underlying fairness, reasonableness, and adequacy of the Settlement
2 Agreement.

3 The Court, having fully considered the matter and good cause appearing, hereby ORDERS:

- 4 1. The parties' Joint Motion for Final Approval of Class Action Settlement Agreement is
5 GRANTED. The Court finds and concludes that the settlement is fair, reasonable, and
6 adequate.
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- 8 2. The parties' Settlement Agreement and Order, attached as Exhibit A to the Declaration
9 of Susan Kas in Support of Plaintiffs' Motion for Preliminary Approval (Dkt. 94-1) is
10 APPROVED and incorporated herein.
- 11 3. The parties to the Settlement Agreement and Order shall perform all of their obligations
12 thereunder. The case is DISMISSED, but the Court shall retain jurisdiction over the
13 matter to enforce the provisions of the Settlement Agreement and Order until
14 Defendants' obligations terminate under paragraph 36 of the Agreement.
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- 16 4. The Settlement Agreement and Order is binding on class members. It settles all of
17 Plaintiffs' claims for class-wide injunctive relief against Defendants that were asserted
18 in the Complaint filed on January 28, 2021.

19 IT IS SO ORDERED.

20 Dated: September 21, 2022

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23 _____
24 Barbara Jacobs Rothstein
25 U.S. District Court Judge
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